

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

CARL LEWIS,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 2:06cv237-CSC
)	
CITY OF MONTGOMERY,)	
)	
Defendant.)	

ORDER

On July 17, 2007, the defendant filed a reply to the plaintiff's response, asserting that, "[i]n Plaintiff's brief in opposition to the Motion for Summary Judgment, Plaintiff names three new comparators whom were not identified in this case prior thereto, namely: John Hopper, Paul Evans, and Karen Barnes." (Doc. No. 24, p. 1.) It is clear to the court, however, that the plaintiff named these comparators in his amended complaint. (Doc. No. 10, p. 4.) Thus, the court concludes that the plaintiff should be provided an opportunity to respond to the City of Montgomery's contention that he has failed to show that John Hopper, Paul Ammons, and James Barnes "are not sufficiently similarly situated to fulfill the plaintiff's initial burden under the *McDonnell Douglas* framework." (Doc. No. 24, p. 3.) Accordingly, it is

ORDERED that, on or before July 31, 2007, the plaintiff shall file a response to the defendant's assertion that his allegations concerning John Hopper, Paul Ammons, and James Barnes fail to demonstrate a prima facie case of discrimination.

In his response, the plaintiff should make specific reference to the following provisions of Rule 56(e), Federal Rules of Civil Procedure:

When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his

pleading, but his response, by affidavits or as otherwise provided for in this rule, must set forth specific facts showing that there is a genuine issue for trial.

A party opposing a motion for summary judgment cannot rely only on the unsworn pleadings but must oppose the motion by filing sworn affidavits that set forth specific facts which demonstrate that there is a genuine issue of material fact for trial in this case.¹ Failure to file sworn affidavits may result in this court accepting the moving party's evidence as the truth.² If documents are referred to in the opposing affidavits and have not been previously filed with the court, sworn or certified copies of those papers must be attached to the affidavits or served with them.

Failure to follow the requirements of Rule 56 regarding the proper way to oppose a motion for summary judgment may result in an order granting the motion and entry of final judgment in favor of the moving party without further proceedings.

Done this 20th day of July, 2007.

/s/Charles S. Coody
CHARLES S. COODY
CHIEF UNITED STATES MAGISTRATE JUDGE

¹An affidavit is a sworn statement in writing made under oath or on affirmation before a notary public or other authorized officer. The affidavit must be made on personal knowledge, set forth such facts as would be admissible in evidence, and show affirmatively that the affiant is competent to testify to the matters stated in the affidavit.

²If the party opposing the motion is unable to present, by affidavit, facts essential to justify his opposition, then he must file a sworn statement as to why he is unable to do so.